should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

§ 518.7 Control system.

A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this Regulation. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this Regulation, unless otherwise required by § 518.31.

DEFINITIONS

§ 518.8 Definitions and terms.

As used in this regulation, definitions and terms are listed in appendix F to this part.

§ 518.9 FOIA request.

A written request for DoD records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7 (reference b), this part, or DoD Component supplementing regulations or instructions. This part is the Department of the Army's supplementing regulation.

§ 518.10 Agency record.

(a) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in DoD's possession and control at the time the FOIA request is made.

(b) The following are not included within the definition of the word ''record'':

(1) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence.

(2) Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium are not agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.) Exceptions to this position are outlined in paragraph (c) of this section.

(3) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(4) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(5) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

(c) In some instances, computer software may have to be treated as an agency record and processed under the FOIA. These situations are rare, and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an agency record are:

(1) When the data is embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(2) Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of a DoD Component, such as computer models used to forecast budget outlays, calculate retirement system costs, or optimization models on travel costs.